

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-495

HONG NGUYEN

APPELLANT

V.

RIVERSIDE FURNITURE

APPELLEE

Opinion Delivered December 17, 2008

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F603172]

AFFIRMED

JOHN MAUZY PITTMAN, Chief Judge

Appellant suffered an injury in a fall at work on January 4, 2006. Appellee employer did not dispute compensability, and it paid benefits for medical services and temporary-total disability that accrued prior to March 27, 2006. Appellant filed a claim for additional temporary-total disability and medical benefits. The Arkansas Workers' Compensation Commission found that appellant failed to prove entitlement to additional temporary-total disability benefits, and that she was barred from collecting medical benefits based on treatments and referrals rendered by Dr. Van Hoang because he was not an authorized physician. Both of these findings are challenged on appeal. We affirm.

In reviewing decisions of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence, *i.e.*, by evidence that a reasonable person might accept as adequate to support a conclusion. *Wal-Mart Stores, Inc. v.*

Sands, 80 Ark. App. 51, 91 S.W.3d 93 (2002). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Id.*

When an injured employee is totally incapacitated from earning wages and remains in his healing period, he is entitled to temporary-total disability. *Searcy Industrial Laundry, Inc. v. Ferren*, 92 Ark. App. 65, 211 S.W.3d 11 (2005). The healing period ends when the employee is as far restored as the permanent nature of his injury will permit; if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. *Id.* The determination of when the healing period has ended is a factual determination for the Commission and will be affirmed on appeal if supported by substantial evidence. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). These are matters of weight and credibility and thus lie within the exclusive province of the Commission. *Id.*

Since 1989, appellant has been treated for back, neck, and arm complaints resulting from degenerative discs, several automobile accidents, and being struck in the back by a forklift. She asserted that she experienced back, neck, and arm pain following the fall she sustained at work on January 4, 2006, and asserted that these complaints stemmed from her compensable injury. She was treated by Dr. Terry Clark, who referred her to Dr. Joseph Queeney, a board-certified neurosurgeon, for evaluation. In a report dated March 21, 2006, Dr. Queeney said that he observed no palpable spasm or tenderness, and that appellant demonstrated very good mobility and full cervical range of motion. Dr. Queeney further

stated that he reviewed radiologic films and an MRI that were essentially normal. He also stated that he reviewed “some sort of electrodiagnostic performed by Brady T. McCollum, DPT,” and that, although this test had some very significant findings, those findings “certainly do not correlate with the patient’s examination.” Finally, Dr. Queeney opined that appellant did not need surgery, and he referred her back for nonsurgical management. After receiving this report, Dr. Clark released appellant to return to work at her regular job on March 22, 2006. Appellant then was seen by her personal physician, Dr. Van Hoang, who opined on March 28, 2006, that she was unable to work because of cervical and low back problems.

Appellant asserts that Dr. Queeney’s opinion and Dr. Clark’s release to return to her normal job are not substantial evidence to support the Commission’s finding that appellant’s healing period ended on March 28, 2006, because these conflicted with Dr. Hoang’s opinion that she remained unable to work after that date. She argues that the opinion and recommendations of her treating physicians were less credible than that of Dr. Hoang, as demonstrated by the fact that the administrative law judge expressly found appellant’s testimony that she remained unable to work was credible. This argument displays a gross misunderstanding of the scope of the Commission’s review of the findings of the ALJ and of our own review of the findings of the Commission.

The Commission reviews the findings of the ALJ *de novo*, conducting its own fact-finding independent of that done by the ALJ, and it is the function and duty of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. *Crawford v. Pace*, 55 Ark. App. 60, 929 S.W.2d 727 (1996); *Hardin v. Southern*

Compress Co., 34 Ark. App. 208, 810 S.W.2d 501 (1991). With regard to our appellate review of the decisions of the Commission, it is a well-established principle of Arkansas law that the findings of the ALJ, unless expressly adopted by the Commission, are irrelevant for purposes of appeal. *Matthews v. Jefferson Hospital Association*, 341 Ark. 5, 14 S.W.3d 482 (2000); see *Jones v. Tyson Foods, Inc.*, 26 Ark. App. 51, 759 S.W.2d 578 (1988). We are required by settled precedent to ignore the findings of the ALJ and restrict our review to the findings of the Commission. See *Matthews, supra*; see also *Scarborough v. Cherokee Enterprises*, 306 Ark. 641, 816 S.W.2d 876 (1991); *Stiger v. State Line Tire Service*, 72 Ark. App. 250, 35 S.W.3d 335 (2000). The credibility of a physician's medical opinion is a question for the Commission, whose determination will not be reversed unless no reasonable person could have relied on it to reach the conclusion arrived at by the Commission. Here, it cannot be said that a reasonable physician could not arrive at the conclusion reached by Dr. Queeney, or that the Commission was required, as a matter of law, to unthinkingly adhere to the opinion of appellant's personal physician in determining when appellant's healing period ended.

Appellant next argues that the Commission erred in finding that she was not entitled to medical benefits related to Dr. Hoang's treatment during the period of time before he became an authorized physician. We disagree. A change of physician must be authorized by the Commission if the employer has provided the worker with a form giving instructions on how to obtain a change of physician. Arkansas Code Annotated section 11-9-514(c)(1)-(3) (Repl. 2002) provides that, after being notified of an injury, the employer shall deliver to the

employee, in person or by certified or registered mail, return receipt requested, a copy of a notice, approved or prescribed by the Commission, that explains the employee's rights and responsibilities concerning change of physician. If, after notice of injury, the employee is not furnished a copy of the notice, the change-of-physician rules do not apply. Any unauthorized medical expense incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.

Appellant concedes that she received the statutory notice but argues, without citation to any authority, that she is nevertheless entitled to benefits for medical services rendered by the unauthorized physician because the form was in English rather than her native Vietnamese, and her employer knew that she did not speak English. We do not agree. The English language is the official language of the state of Arkansas pursuant to Arkansas Code Annotated section 1-4-117(a) (Repl. 2008), and appellant was provided with the standard notice prescribed by the Commission explaining her rights and responsibilities concerning change of physician. The statute only requires that the notice be provided by the employer; in the absence of fraud regarding the import of the notice, the responsibility to read it or seek to have it read aloud, translated, or explained belongs to the employee. Here, there is no evidence of fraud or that there was even a request for such an explanation when the form was delivered, and we cannot under these circumstances say that the Commission erred in finding that appellant was not entitled to medical benefits related to Dr. Hoang's treatment during the period of time before he became an authorized physician.

Affirmed.

HART and GRIFFEN, JJ., agree.